

only. Once constructed, geographic licensees in either the Lower 80 SMR block or the General Category frequencies should be able to assign their licenses to any entity, regardless of size.

F. Coverage Requirements

PCIA supports the commission proposal to permit geographic licensees to meet a "substantial service" standard, similar to 900 MHz, in meeting construction requirements. The number of incumbent licensees and the inability to involuntarily relocate the licensees necessitates a relaxed construction standard. However, geographic licensees should not be able to construct a single transmitter in a remote portion of the area and claim that the channel is constructed throughout the EA. With the ability to disaggregate and partition the channel block, such spectrum warehousing is unnecessary.

On this basis, PCIA believes that a geographic licensee should be required to demonstrate construction covering the proper proportion of the population or substantial service for each and every channel. Failure to construct any channel in this manner should result in a modification of the geographic license to delete the affected channels or uncovered areas of the EA.

G. Incumbent Geographic Licenses

PCIA fully supports the Commission's proposal to permit incumbent licensees who are not successful bidders to obtain geographic licenses for their existing operations. This will

transmitter within 35 miles of an adjacent EA border would also be eligible to bid for his channels in the adjacent EA.

reduce paperwork for the Commission and give licensees desired flexibility in meeting customer service demands as well as responding to antenna site problems. However, a notification system must be created by which all geographic licensees inform the Commission of their constructed sites. This notification will significantly aid in the identification of sources of interference and ensure compliance with the Commission's co-channel separation requirements. A third party provider could be established to provide this service.

H. Disaggregation and Partitioning

PCIA supports the Commission's proposal to permit disaggregation and partitioning of spectrum blocks. Disaggregation and partitioning are important tools to ensure the build-out of new systems while minimizing the need to relocate incumbent systems.

I. Relocated Systems Interference Protection

PCIA believes that one aspect of mandatory relocation of Upper 200 Channel licensees requires particular attention. When an incumbent system is relocated under involuntary circumstances, the incumbent licensee should not have co-channel systems located any closer or in any greater number than their current situation. Operating systems co-channelled with short-spaced systems have been constructed or altered in a manner to avoid interference.

Re-tuning the system to another channel, with co-channel systems that are closer or more numerous, means that the incumbent does not have the same operating parameters as the original system. Although transmitter-based short-spaced licensees can modify their

licenses, modifications will be limited to situations where the interference contour does not change. The Commission should avoid permitting a relocated licensee to be "shoe-horned in" on a channel, making it difficult for the licensee to operate without interference or to participate in geographic licensing on the new channel.

J. Auction Methodology

Finally, although PCIA opposes auctions in the lower bands, if the Commission elects to utilize auctions, PCIA suggests that the Commission use a market-by-market stopping rule without a minimum activity rule for both the Lower 80 SMR channels and the General Category channels. Simultaneous stopping and minimum activity rules result in participants "parking" bids, which ultimately drives up prices regardless of the actual value of the spectrum. Moreover, as has been witnessed in the 900 MHz SMR auctions, strategic bid "parking" by larger entities has pushed many smaller legitimate players out of the running for single service areas in which they have legitimate interests.

As the Commission has designated this spectrum for small entrepreneurs, a simultaneous stopping rule and minimum activity requirements will hurt the ability of smaller operators to participate in an auction.

III. CONCLUSION

For the foregoing reasons, PCIA urges the Commission to modify its proposed rules for 800 MHz licensing consistent with the views expressed herein.

Respectfully submitted,

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APPENDIX 1

PCIA INCUMBENT BILL OF RIGHTS FOR RELOCATED 800 MHZ LICENSEES⁴⁷

The basic premise of the transition rules is that an incumbent SMR licensee is entitled to a system "comparable" to its existing system with all costs paid by the auction winner.

- - The auction winner would guarantee payment of all costs of retuning the incumbent, including all engineering and equipment fees, as well as any additional reasonable costs. Such expenses might include: FCC filing fees; preparation of a new application, etc.
- - A comparable system would be one that is as good as or superior to the existing system. A comparable SMR system likely would have the following characteristics:
 - > The new system would have the same number of channels (at the same bandwidth) as the incumbent currently holds.
 - > The retuned frequencies would be selected so that they are compatible in a multi-channel system at the incumbent's operating location.
 - > The new frequencies would have no co-channel licensees within the BEA (unless negotiated otherwise), and would have no co-channel transmitter based licensee within seventy (70) miles if the distance spans more than one BEA.
 - > The incumbent's base station equipment would have to be modified to operate on the new frequencies, and all user units would have to be reprogrammed/recrystallized for the new frequencies, including user control stations. However, in some cases the incumbent end user equipment may not be modifiable and new equipment will be necessary, which should be provided at the EA licensee's expense.

⁴⁷The use of an arrow "→" indicates that the Commission has incorporated the concept into its proposal. PCIA recommends that the Commission adopt all underlined items.

- - > The new frequencies/equipment must provide the same (if not better) performance as the existing frequencies/equipment, including antenna height and power as well as interference protection.
 - > The incumbent is entitled to the same channel separation for the new frequencies as the current authorization. In other words, if the licensee currently has 1 MHz spacing between the assigned channels, the incumbent is entitled to receive the same channel spacing on the new channels (unless the incumbent agrees otherwise). Similarly, an incumbent utilizing contiguous channels is entitled to receive new contiguous channels as part of any move.
- - The wide area licensee would complete all activities necessary for placing the new system into operation and provide the incumbent with a seamless transition to the new system. This may require the construction of a complete, redundant backbone system, with customers gradually moved from one system to the other.⁴⁸ However, costs for the redundant backbone, as well as designation of an incumbent employee to manage the transition (at their normal hourly rate) , including duplicative costs for tower rent, must be borne by the auction winner. Payment of costs to incumbent licensees should be made "up front" to the maximum extent possible. The incumbent licensee should not be required to put forth money for the transition. Similar to construction contracts,, payment schedules should be created to provide the incumbent licensee with actual recovery of costs immediately.
 - "Safety net" provision guarantees that no incumbent SMR licensee, under any circumstances, will be required to cease its operations unless suitable alternative facilities are identified and agreed to.
- - BEA licensees should be required to notify any incumbent licensees that the BEA licensee intends to move the incumbents within one year of grant of the BEA license. Failure to notify the incumbent within one year will relieve the incumbent of any mandatory relocation requirement.

⁴⁸The redundant backbone may need to include repeaters, interconnect equipment, combiners, antennas, additional telephone lines, site rental costs, equipment maintenance, etc. All costs for the redundant backbone must be borne by the BEA licensee.

1. The Transition Plan and Cost Commitment Must Include:

- a. The engineering plan for modification to the system or relocation to other spectrum or facilities;
 - b. A review of options available or considered, along with reasons for the approach selected;
 - c. Cost estimates that include all direct and indirect costs to the incumbent SMR licensee from implementing the requested accommodation;
 - d. Details concerning zoning, site availability, environmental and any other approvals required to effectuate the accommodation; and
 - e. The projected time frame in which the accommodation can be implemented, consisting of all operational, regulatory and approval requirements.
 - f. Incumbent licensees should be free to negotiate mutually acceptable agreements for spectrum accommodation or relocation.
- g. Full Cost Compensation. In the event that voluntary negotiations prove fruitless at the expiration of a fixed period of one year, a BEA licensee may request involuntary relocation of the incumbent, subject to the condition that the BEA licensee assume the relocation costs.

→ **2. Suggested Options for Relocation**

PCIA recommends three options for the manner in which relocation can be accomplished. The three options listed below are not exclusive of other ideas which may be agreed to by the BEA licensee and the incumbent licensee, but represent critical factors that must be present in any relocation agreement.

a. Option #1

Construction of "turn key" facilities. Unless agreed to otherwise, the BEA licensee will itself complete the construction and related activities necessary for bringing the retuned facilities into service. After testing and acceptance by the incumbent, the new installation would be handed over to the incumbent licensee in exchange for the relinquishment of its old

system and frequency. The incumbent licensee should have the right to supervise all construction.

b. Option #2

Reimbursement of reasonable expenses incurred. The parties agree that the incumbent licensee will assume the responsibility for relocating its facilities, with the BEA licensee undertaking to reimburse the licensee for all reasonable and necessary expenses it incurs (see payment options discussed above) , including incumbent **employee** time expended on the actual relocation of facilities and customers.

c. Option #3

Up front cost cash compensation. The parties agree up front upon the costs associated with relocating the incumbent licensee to a new spectrum home or to alternative facilities and the BEA licensee provides that licensee with monetary compensation for those costs. The incumbent licensee would then effectuate the relocation itself. Legitimate unanticipated cost overruns should also be paid to the incumbent licensee.

3. **The Transition Process Should Be Required to Follow Established And Predictable Procedures That Will Facilitate Settlements**

In order to initiate the relocation process, the BEA licensee first transmits a "Notice of Request for Accommodation" to affected incumbent SMR licensees. The purpose of the notice and the required response of the incumbent SMR licensee would be to exchange information necessary to begin negotiation of the issues attendant to the relocation. The notice and/or response should include the following information:

- a. In the notice, the BEA licensee must specify the frequencies and their locations for which accommodation is sought.
- b. The notice would state that the incumbent SMR licensee is entitled to either: 1) request that the BEA licensee itself prepare a transition plan and compensation commitment; or 2) prepare its own

transition plan and cost estimates for transmittal to the BEA licensee.

- c. In its response, the incumbent SMR licensee would be obligated to advise the BEA licensee of its choice regarding allocation of the responsibilities for preparation of the transition plan and relocation of the facilities.
- d. The response should also include all information and specifications necessary to determine the technical performance of the incumbent SMR licensee's existing facilities so that the benchmark against which the new system must be designed can be established.

Once the relevant information has been exchanged, the parties would proceed to negotiate the allocation of relocation responsibilities and resolve any differences or disputes concerning the details of the plan and the costs involved. Implementation of the plan would begin as soon as an agreement is reached on these details. To facilitate this negotiation process the FCC should:

- e. Make clear that the required "cost compensation" includes the replacement cost of existing facilities, including all expenses necessary to bring the new system into operation, where the new facilities are deemed to be comparable alternatives; and;
- f. Declare that there is a rebuttable presumption of comparable facilities where the auction winner: (1) proposes the installation of facilities whose specifications meet or exceed those of the incumbent licensee's existing facilities; and (2) demonstrates through reliable engineering documentation that comparable performance can be expected from the new system under anticipated field conditions.

4. The Procedures For Addressing Transition Plan Controversies Must Be Carefully Circumscribed To Promote Expeditious Settlements

The process of resolving relocation disputes must satisfy two fundamental criteria. First, the process must minimize the

imposition of limited agency resources. Second, it must contain strong incentives for prompt settlement. The following procedures should reasonably accommodate these concerns:

- a. Neutral mediation. Parties unable to reach a mutual understanding concerning the transition plan and related issues would be required to seek outside mediation. The transition plan, the estimated costs of relocation, and the particular area of dispute would be submitted to evaluation by a mutually acceptable, neutral expert. This independent review would be a pre-condition to seeking FCC intervention.⁴⁹
- b. FCC intervention as a last resort. The Commission would serve only as the forum of last resort for resolving disputes about the relocation plans or parties' compliance with the transition procedures.
- c. Loser pays costs. The losing party before the FCC would be required to pay the full costs of the dispute resolution process, including those incurred by the "winning party" and by the agency. This requirement would penalize dilatory tactics while at the same time offering incumbents protection against pressure to accept a demonstrably incomplete or inferior relocation proposal.

This tiered process can be expected to encourage the parties either to agree initially or, as a minimum, to accept the expert's impartial evaluation and to discourage further appeals to the agency. As such, its adoption by the Commission should serve to accelerate the introduction of newer technologies for the public.

⁴⁹PCIA originally proposed in its Ex Parte Comments that its resources can be a significant aid in this process. PCIA continues to offer its services to further rapid settlement of relocation issues.